

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOEL ANDERSON,

Plaintiff,

vs

9:07-CV-1184

KAREN LAPOLT, Deputy Superintendent of Program Services; MICHAEL LEGHORN, Captain; B.P. BROWN, Correctional Sargent; DR. BASHVAR, Physician; and DR. GUZMAN, All of Eastern NY Correctional Facility; and MAXINE MOE # 1,

Defendant.

APPEARANCES:

OF COUNSEL:

JOEL ANDERSON
03-A-3649
Plaintiff, pro se
Sullivan Correctional Facility
Box 116
Fallsburg, NY 12733

HON. ANDREW M. CUOMO
Attorney General of the
State of New York
Attorney for Defendants
Department of Law
The Capitol
Albany, New York 12224

DAVID N. HURD
United States District Judge

SHOSHANNAH V. BEWLAY, ESQ.
Asst. Attorney General

DECISION and ORDER

Plaintiff, Joel Anderson, brought this civil rights action in November 2007, pursuant to 42 U.S.C. § 1983. By Report-Recommendation dated September 17, 2009, the Honorable Randolph F. Treece, United States Magistrate Judge, recommended that defendants' motion to dismiss (Docket No. 31) be granted in part and denied in part; that plaintiff's cross-motion

for default judgment be denied; and that if the recommendations are accepted, the following claims and defendants will remain: (1) plaintiff's retaliation claim against Leghorn; (2) plaintiff's state law claims; (3) plaintiff's access to courts claim against Guzman and Maxine Moe #1; and that if the recommendations are adopted, the defendants should be directed to file an answer to the surviving claims. The Magistrate Judge also warns plaintiff that if the recommendations are accepted, he must take reasonable steps to ascertain the identity of Maxine Moe # 1, and file a motion to amend his amended complaint to add such individual by name. No objections to the Report-Recommendation have been filed.

Based upon a careful review of the entire file and the recommendations of Magistrate Judge Treece, the Report-Recommendation is accepted and adopted in all respects. See 28 U.S.C. 636(b)(1).

Accordingly, it is

ORDERED that

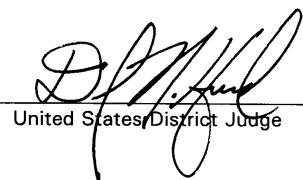
1. Defendants' motion to dismiss (Docket No. 31) is GRANTED IN PART and DENIED IN PART;
2. Plaintiff's cross-motion for default judgment is DENIED;
3. Plaintiff's retaliation claim against defendant Michael Leghorn remains as part of this action;
4. Plaintiff's state law claims will remain as part of this action;
5. Plaintiff's access to courts claim against defendants Dr. Guzman and Maxine Moe #1 will remain as part of this action;
6. The defendants are directed to file an answer to the surviving claims;

7. The plaintiff must take reasonable steps to ascertain the identity of Maxine Moe # 1; and if so, he must file a motion to amend his amended complaint to add such individual by name; and

8. This matter is referred back to the Magistrate Judge for further proceedings.

IT IS SO ORDERED.

Dated: October 1, 2009
Utica, New York.


United States District Judge